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9th MEETING

Wednesday, 13 April 1977, at 10.30 a.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 adopted by the General Assembly on 15 December 1975 and 24 November 1976 [Agenda item 11] (*continued*)

ARTICLE 6 (Cases of succession of States covered by the present articles) (*continued*)[1]

1. Mr. WAITITU (Kenya) said that, of the three amendments before the Committee, his delegation found the Ethiopian amendment (A/CONF.80/C.1/L.6) the most acceptable; stated in the negative, the idea embodied in article 6 came out more strongly than it did from the present wording of article 6. His delegation also found some merit in the Romanian amendment (A/CONF.80/C.1/L.5), and only if it had to make a choice between the Romanian and Ethiopian amendments would it opt for the latter. It would be preferable to request the Drafting Committee to take both amendments into consideration with a view to working out an acceptable article.

2. His delegation considered the Soviet amendment (A/CONF.80/C.1/L.8) to be more in the nature of a fresh proposal than an amendment; it would eliminate completely the fundamental idea embodied in article 6, and his delegation found that unacceptable.

3. His delegation did not consider it possible to work out an entirely satisfactory wording; it was therefore open to any proposal concerning the settlement of disputes.

4. Mr. SIMMONDS (Ghana) observed that his delegation had already expressed its support for the text drawn up by the International Law Commission; it would therefore confine itself to expressing its views on the Soviet amendment. His delegation was not in any real disagreement with that amendment and would have been prepared to accept it as mere embroidery to article 6; it could not, however, subscribe to the idea that the proposed text should completely replace article 6. It was necessary to stipulate that the convention would not apply to case of succession not occurring in conformity with the norms of international law and the principles set forth in the Charter of the United Nations. While aware that the Soviet amendment had the support of a large number of delegations, his delegation nevertheless felt that it related to a different matter than that dealt with in article 6. That seemingly innocuous proposal might, indeed, have serious implications for many articles of the draft. It also appeared to be an abridged version of the amendment submitted and later withdrawn by the Australian delegation (A/CONF.80/C.1/L.3). Therefore, his delegation could accept the Soviet amendment only as a supplement to article 6 and not as a replacement for it.

5. Mr. KOH (Singapore) observed that it was clear from the discussion that members of the Committee were not opposed to the principle set forth in article 6 but some delegations had doubts concerning the wording of that provision. In order to reconcile the Soviet amendment with the text worked out by the International Law Commission, he wished formally to propose the following amendment:

> The present articles apply to the effects of a succession of States only in cases where such succession is valid in accordance with international law and in particular the principles of international law embodied in the Charter of the United Nations.[2]

6. That amendment would take into account the Soviet proposal without overlooking the initial text for the draft article and might make it possible to resolve the problem which the words "occurring in conformity with" in the draft article posed to several delegations. The wording of the amendment was also consistent with the style adopted by the International Law Commission.

7. Mr. EUSTATHIADES (Greece) said that, while reserving the right to address itself to the Singapore proposal at a later stage, his delegation had not changed its position on article 6 and continued to support the original text for the draft article. It might have been thought that the draft convention was applicable to cases of succession of States not occurring in conformity with international law, since private law regulated a number of unlawful situations, such as the situation of illegitimate children and since, despite the prohibition of the use of force in international relations, there was a law of war; by limiting the application of the convention to cases of succession occurring lawfully, article 6 seemed to offer the best solution. There still remained the question as to who would determine the legitimacy of a succession—hence the need for an effective mechanism for the settlement of disputes. His delegation continued to favour article 6, since it condemned the *fait accompli* and was the product of lengthy reflection by the International Law Commission. It did, however, wonder whether it was appropriate to retain the term "only" and whether there was any need to include a reference to international law, since the principles

[1] For the amendments submitted to article 6, see 6th meeting, foot-note 3.

[2] This amendment was subsequently issued as document A/CONF.80/C.1/L.17.

of international law embodied in the Charter of the United Nations now formed part of general international law and must be respected both by States Members of the United Nations and by States which were not members or which had ceased to be members.

8. Mr. SUCHARITKUL (Thailand) said that he was in favour of retaining article 6, subject to a few drafting changes. In that connexion, he saw merit in the Ethiopian amendment. He would, however, prefer the Soviet amendment to supplement article 6 rather than to replace it.

9. Mr. AL-SERKAL (United Arab Emirates) supported article 6 as drafted by the International Law Commission; without being opposed to the Soviet amendment, he did not consider that it could replace article 6. The Ethiopian amendment did not affect the substance of article 6 and should be referred to the Drafting Committee.

10. Mr BEDJAOUI (Algeria) said that he had no difficulty in accepting article 6, all the terms of which had been carefully weighed by the International Law Commission, but that the Ethiopian amendment was not without value. He understood those delegations which, while endorsing article 6, feared that it might be the subject of interpretations alien to the spirit in which it had been drawn up. The Soviet amendment introduced a new element, being designed not to modify article 6 but to replace that article by another one. He therefore suggested that the existing text for article 6 should be made to form paragraph 1, and the Soviet amendment paragraph 2, of a new article 6.

11. Mr. HELLNERS (Sweden) said that he was sympathetic to the idea put forward by the representative of Algeria; he would, however, like that representative to explain whether he had merely been making a suggestion or whether he had formally submitted a subamendment to the Soviet amendment.

12. Mr. BEDJAOUI (Algeria) said that he found the draft article submitted by the International Law Commission entirely satisfactory; however, in order to assist the Committee, he wished formally to propose, as a subamendment to the Soviet amendment, that the latter proposal should be made to form a paragraph 2 of article 6, since it could not wholly replace article 6.

13. Mr. USHAKOV (Union of Soviet Socialist Republics) said that the Soviet amendment was in no way designed to modify the International Law Commission's text in substance but was in fact intended to maintain the principle set forth in that provision, while at the same time taking into account the wording of article 13. In drafting its amendment, his delegation had started from the idea, first, that the question of succession of States as such did not fall within the scope of the draft and that it was therefore necessary to include a saving clause, namely article 6; second, that the rules of international law governing treaties between States did not directly concern the draft and that article 13 was therefore of crucial importance; and, third, that the question of the legitimacy of a succession of States was equally as important as that of the legitimacy of an international treaty. Consequently, to combine the existing text of article 6 with the Soviet amendment would be to refer to the same idea in different terms. Such a repetition would merely complicate the interpretation of article 6. Since the original text of the draft article did not, in principle, pose any difficulties to his delegation, it would withdraw its amendment. It wished to thank those delegations which had expressed support for the text which it had submitted.

14. The CHAIRMAN thanked the representative of the Soviet Union for the spirit of co-operation which he had shown. In view of the fact that the Soviet amendment had been withdrawn, the oral subamendment proposed by the Algerian representative no longer applied. He asked the representative of Singapore whether he wished to maintain his amendment, in view of the fact that it seemed to have been prompted by the Soviet amendment and to be in the nature of a compromise.

15. Mr. KOH (Singapore) said that the object of his delegation's amendment was to produce a more acceptable wording for article 6. Since the Soviet delegation still appeared to have some diffulty with the wording of that provision, the Singapore amendment might still be of some use to it.

16. Mr. AL-NOURI (Kuwait) said that article 6 had been drafted with a high degree of precision by the International Law Commission; he was in favour of retaining that provision.

17. The CHAIRMAN observed that the Committee still had before it the amendments of Ethiopia (A/CONF.80/C.1/L.6), Romania (A/CONF.80/C.1/L.5) and Singapore, the latter amendment not yet having been circulated. He therefore suggested that the debate on article 6 should be suspended.[3]

Mr. Riad (Egypt) took the Chair.

ARTICLE 7 (Non-retroactivity of the present articles)[4]

18. The CHAIRMAN said he very much regretted that, for reasons beyond his control, he had so far

[3] For resumption of the discussion of article 6, see 34th meeting, paras. 7-8.

[4] The following amendments were submitted: Byelorussian SSR, A/CONF.80/C.1/L.1; Malaysia, A/CONF.80/C.1/L.7; Cuba, A/CONF.80/L.10 and Rev.1 and 2 (the latter also co-sponsored by Somalia), and United States of America, A/CONF.80/C.1/L.16. The United Kingdom of Great Britain and Northern Ireland submitted a working paper in connexion with article 7, A/CONF.80/C.1/L.9.

been unable to perform his duties as Chairman of the Committee of the Whole. He thanked members of the Committee for having elected him to the post of Chairman and emphasized the undoubted importance of the current stage in the work of codification and progressive development of international law.

19. Amendments to article 7 had been submitted by the Byelorussian Soviet Socialist Republic (A/CONF.80/C.1/L.1), Malaysia (A/CONF.80/C.1/L.7), Cuba (A/CONF.80/C.1/L.10) and the United States of America (A/CONF.80/C.1/L.16). In addition, the United Kingdom delegation had submitted a working paper in connexion with article 7 (A/CONF.80/C.1/L.9). The annex to that working paper contained a draft article for inclusion in the final clauses of the convention being elaborated and hence related to a matter which was not, for the time being, on the Committee's agenda. However, it appeared from that document that the United Kingdom delegation would welcome the opportunity to hear forthwith the views of other delegations regarding the participation in the convention of a future successor State. It would therefore be appropriate for the United Kingdom representative to explain his delegation's position on that matter, so that that procedural problem could be settled before the Committee proceeded to discuss article 7 and the amendments submitted by other delegations.

20. Sir Ian SINCLAIR (United Kingdom), introducing document A/CONF.80/C.1/L.9, said that his delegation acknowledged the need for an article dealing with the temporal application of the convention. In its proposed article 7, the International Law Commission had endeavoured to strike a balance between two requirements: the need to work out a set of provisions which would be operative in the future and the need not to impair solutions already achieved or to lay down new and perhaps different guidelines for the discussion of treaty problems still outstanding as a result of a succession which had occurred in the past.

21. His delegation had no basic objection to article 7, although its title was perhaps misleading. As currently drafted, that article did not seek to establish the concept of non-retroactivity in all its rigour; rather, it permitted a limited degree of retroactivity, since it allowed the convention to apply to any succession occurring after its general entry into force. In that respect, article 7 marked an advance on article 28 of the 1969 Vienna Convention, relating to non-retroactivity of treaties. That would be the provision that would be applicable if article 7 did not exist, and as the International Law Commission had observed in paragraph (3) of its commentary to article 7 (A/CONF.80/4, pp. 23-24), article 28 of the 1969 Vienna Convention would, if literally applied, prevent a successor State from applying the future convention to its own succession. His delegation favoured the retention of article 7, but was nevertheless conscious of the doubts which that provision had prompted certain delegations to express, particularly during the debate on article 2. The article under consideration might, indeed, give the erroneous impression that the convention was largely irrelevant to the current interests of many States. Some delegations had also expressed the view that non-retroactivity was a matter that should be dealt with in the final clauses of the convention.

22. During the debate on article 2, his delegation had already indicated its intention to propose at a later stage a procedural mechanism enabling successor States to apply the convention to their own succession, without opening the door to unlimited retroactive application.[5] Such a mechanism could most appropriately be provided for in the final clauses.

23. It was for that reason that his delegation had submitted working paper A/CONF.80/C.1/L.9, containing a draft article for inclusion in the final clauses which was designed to temper some of the more rigorous consequences of the rule laid down in article 7. Since the time had not yet come to consider the final clauses, his delegation did not ask the Committee to take a decision on its proposal. It had, however, thought it desirable already to give delegations an idea of the mechanism which it envisaged.

24. The CHAIRMAN noted that members of the Committee appeared to agree that article 7 should be considered in the light of document A/CONF.80/C.1/L.9.

25. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic), introducing his delegation's amendment (A/CONF.80/C.1/L.1), emphasized that the object of the future convention was to regulate the transfer of rights and obligations deriving from treaties in cases involving the establishment of a new, independent State or a uniting or separation of States. The draft was prompted by the need to give newly independent States the option of deciding which treaties of the predecessor State should be maintained in force. In general, the International Law Commission's draft was consistent with the general principles of international law, particularly those laid down in the Charter of the United Nations, such as the principle of the sovereign equality of States.

26. The International Law Commission had been justified in drafting a provision of the kind contained in article 7. However, the title of that provision was inadequate and could more appropriately be drafted in the form proposed by his delegation in its amendment. The title of article 7 proposed by the International Law Commission was based on the title of article 4 of the 1969 Vienna Convention. However, the resemblance between those two articles was merely apparent. While the opening phrase of each of those articles was similar, the second was quite different.

[5] See above, 3rd meeting, para. 12.

The Vienna Convention applied only to treaties concluded by States after its entry into force with regard to such States, whereas the article under consideration provided that the future convention would apply to successions of States occurring after its entry into force. Once it had entered into force, therefore, the prospective convention would apply to the succession of a new State before that State became a party to it. In such a case, there would therefore be retroactive application. That was why article 7 was of vital importance. Without such a provision, article 28 of the 1969 Vienna Convention would apply, and the future convention would be deprived of practical value.

27. Mr. ARIFF (Malaysia), introducing his delegation's amendment (A/CONF.80/C.1/L.7), observed that the commentary to that provision appeared to be based on the commentary to article 4 of the 1969 Vienna Convention. While that precedent could serve as a model as far as substance was concerned, it was less appropriate to use it as a basis in matters of form.

28. The article under consideration consisted of a saving clause based largely on the corresponding article of the 1969 Vienna Convention, followed by a provision limiting the application of the future convention to cases of succession occurring after its entry into force. While subscribing to the substance of article 7, he would submit that its drafting could be improved, as was proposed in his delegation's amendment, by expressing the general principle before the saving clause. Since that amendment related exclusively to form, it could be referred to the Drafting Committee.

29. Mr. HERNANDEZ ARMAS (Cuba), introducing his delegation's amendment (A/CONF.80/C.1/L.10), stressed the importance of article 7 for the future convention as a whole. He expressed the hope that the constructive spirit which had so far prevailed during the consideration of the draft articles, particularly articles 2 and 6, would be maintained and that due account would be taken of the interests of the developing countries. The article under consideration was a case in which it was necessary to take into account the special situation of the newly independent States, which often lacked skilled technical personnel and sometimes had to accept conditions which were real obstacles to their development.

30. His delegation welcomed the International Law Commission's acceptance of the fact that the "clean slate" principle should be applied to newly independent States, but noted that that principle had its limits. For that reason, it proposed to add to article 7 a paragraph embodying the principle of retroactivity for new States which acceded to independence as a result of the decolonization process or the liberation struggle, under United Nations auspices. There was a danger that article 7, as currently worded, would deprive the future convention of much of its potential value for newly independent States. Those States had no desire to overlook their international commitments. They were willing to respect all treaties which did not run counter to their own interests and were not detrimental to international peace. Nevertheless, they wished to be free to choose the treaties which could be maintained in force. As the representative of an African State had recently observed, a newly independent State could sometimes be kept waiting for a considerable period of time before the former metropolitan power informed it of the existing treaties which concerned it. As Mr. Fidel Castro, President of Cuba, had recently stated, one had to have travelled through Africa to understand what colonialism and racism really were.

31. The object of his delegation's amendment was to limit the retroactive application of the convention to cases of succession of States which had attained their independence as a result of the decolonalization process or the liberation struggle, so as to avoid misinterpretations based on analogy and to fulfil the mandate entrusted by the United Nations General Assembly to Member States—namely, to permit newly independent States to decide freely which treaties might facilitate their development and which might hamper it.

32. Mr. KEARNEY (United States of America), introducing his delegation's amendment to article 7 (A/CONF.80/C.1/L.16), said that, although that amendment might appear to be a radical one, since it began by proposing the replacement of the title "Non-retroactivity of the present articles" by "Application of the present articles", it did not, in fact, entirely reject the principle of non-retroactivity.

33. In the view of the United States Government, article 7 placed unduly strict limitations on the application of the future convention. The first question to ask was why such limitations were necessary and why the future convention should not apply to successions occurring before its entry into force. Experience showed that a considerable period of time generally elapsed before a codification convention entered into force. It was questionable whether the application of the future convention needed to be limited as was done under the provisions of article 7. A further question to be considered was whether the convention being elaborated was so innovative and such a departure from custom that it should apply only to situations occurring after its entry into force. The fact was that the convention was based on State practice and was designed to formulate procedural rules capable of resolving the treaty problems which arose on the occurrence of a succession of States. The convention was intended to facilitate the process of succession. That being the case, it would be highly advisable to limit the scope of the principle of non-retroactivity to situations in which the application of that principle would not raise more difficulties than it would resolve.

34. The International Law Commission seemed to have adhered too slavishly to the rule set forth in article 4 of the 1969 Vienna Convention, by adopting the same cut-off date. In that connexion, he recalled that, at the 1969 Vienna Conference, the entry into force of the Convention had been regarded as decisive because some States considered the Convention had augmented the law of treaties in certain basic aspects. In the present instance, it should not be forgotten that successions of States could occur in widely differing circumstances which could require a different frame of reference than the action of two States in agreeing to conclude a treaty, which was far more volitional in character.

35. As the representative of Cuba had rightly pointed out, it was in the interests of newly independent States that the provisions of the convention should apply to the successions. In its written comments on article 7 submitted in 1975, the United States Government had stated that there "does not seem to be any basis, in principle, for preventing a State, which becomes newly independent prior to entry into effect of the draft articles, from becoming a party thereto after their entry into effect and making use of these provisions in regulating its treaty relationships to the fullest extent possible in light of the situation as it exists at the time the articles become applicable to the successor State" (A/CONF.80/5, p. 129). However, there was no reason to grant that advantage only to States "which have attained their independence as a result of the decolonization process or the liberation struggle", as the representative of Cuba was proposing, instead of extending it to all newly independent States, regardless of how they acquired independence.

36. The amendment proposed by the United States provided that, on the occurrence of a succession of States, the successor State and the other parties to a treaty were free to take a decision on the application of the convention. Under that amendment, the present articles would apply to all successions of States occurring *after* their entry into force; however, in the case of a succession occurring *before* their entry into force, they would not apply when the status of the successor State in relation to the treaty had been resolved prior to that entry into force. That restriction was designed both to facilitate the application of the convention and not to upset all the arrangements which a great many States would have worked out prior to the entry into force of the present articles by allowing parties the freedom to themselves work out a solution if they so desired. The word "resolved" had been used in preference to a more precise and more technical term in order to cover all possible types of succession.

37. To sum up, he took the view that the convention should apply to all cases of succession of States, with two exceptions: it would not apply if the States parties and the successor State did not wish to apply it or preferred to apply some other solution; and it would not apply when its application was unnecessary or would merely have the effect to throwing into question a situation which had already been settled before its entry into force.

38. Mrs. THAKORE (India) said that she had some doubts concerning the usefulness of the provision embodied in article 7. That article consisted of two parts.The first, corresponding to the first part of article 4 of the Vienna Convention on the Law of Treaties, was a saving clause which made it clear that the non-retroactivity of the future convention would be "without prejudice to the application of any of the rules set forth in the present articles to which the effects of a succession of States would be subject under international law independently of these articles". The second part, based on article 28 of the Vienna Convention, limited the application of the present articles to cases of succession of States occurring after their entry into force "except as may be otherwise agreed".

39. It was the first part of article 7 which her delegation found particularly objectionable. The reference to "the rules set forth in the present articles to which the effects of a succession of States would be subject under international law independently of these articles" raised the question of the content of the rules of customary international law. By virtue of articles 5 and 7, the future convention would apply as customary law to successions occurring before its entry into force and as conventional law to successions occurring after its entry into force. It was somewhat doubtful whether the convention, which contained a substantial number of new rules, truly represented existing customary international law. As far as succession of States was concerned, State practice was often conflicting. It would therefore be difficult to identify the existing rules of customary international law on succession of States which would govern problems of succession of States in respect of treaties until the entry into force of the convention.

40. Consequently, while an article on non-retroactivity had been needed in the Vienna Convention in as much as that Convention reflected customary international law, the same was not true of the convention under consideration. Article 7 was therefore unjustified. Its inclusion in the convention would create more problems than it would solve. Moreover, if the principle of non-retroactivity were adopted in the form proposed in article 7, it was doubtful whether the restricted meaning given to the term "newly independent States" would have any utility. The problem might perhaps be solved by authorizing the parties to the future convention to apply it retroactively from the date of the succession, but, if that were done, article 7 would lose its justification.

41. She recalled that article 7 had been adopted by a narrow majority in the International Law Commission, that it had also given rise to divergent views in the Sixth Committee and that, in their written com-

ments, Governments had expressed reservations about it. She therefore favoured the deletion of that article.

42. Mr. FLEISCHHAUER (Federal Republic of Germany) said that, in his view, article 7 raised an important problem of a practical, legal and intellectual nature. The article dealt with the question of the applicability of the convention in time, a question which was intimately linked to that of the application of the convention to a successor State. That question presented no difficulty when a treaty was to continue in force for the successor State because the predecessor State had acceded to the convention prior to the succession. It did, however, pose a grave problem in all cases in which the predecessor State was not bound by the convention or where there was to be no automatic continuity—namely, in all cases involving newly independent States. In such cases, the successor State could not, by definition, be a party to the convention at the date of the succession, and some degree of retroactivity seemed inevitable. The question therefore arose whether the solution offered by article 7 enabled those problems to be satisfactorily resolved.

43. In his opinion, article 7 was satisfactory in that it made it clear that the rule of simple non-retroactivity set forth in article 28 of the Vienna Convention on the Law of Treaties did not apply. Article 7 stipulated that the convention applied to all successions occurring after its entry into force *"except as may be otherwise agreed"*. Had the International Law Commission remained silent on the question of the applicability in time of the present articles, that question would have been settled by reference to article 28 of the Vienna Convention, which applied the principle of non-retroactivity to all parties to a treaty. In that case, the future convention would not have been applicable to newly independent States and to other cases of succession of States in which the predecessor State had not been a party to the convention prior to the date of succession, for as the International Law Commission had rightly observed in paragraph (3) of its commentary to article 7, "a successor State could not become a party to a convention embodying the articles until after the date of succession of States" (A/CONF.80/4, p. 23). He felt the International Law Commission had been right to choose as a deadline the general entry into force of the convention; that seemed a valuable criterion for establishing a general rule.

44. However, article 7 made no mention of the procedure enabling the convention to be applied to a successor State which did not inherit from the predecessor State the status of party to the convention. The article needed to be supplemented in that respect through the inclusion of an appropriate provision in the final clauses. In the interests of successor States, the mechanism for their accession to the convention should be as simple and smooth as possible.

45. The question also arose whether it would be in the interests of the community of States to authorize *all States* to accede to the convention with retroactive effect to the general entry into force of the convention. It could well be argued that the accession of a successor State at a time far removed from the succession, or the accession of other States at a time very distant from the general entry into force of the convention, might reopen situations already settled. Article 7 was silent on that aspect of the question, which needed to be examined. In his delegation's view, it would be preferable to examine that point during the debate on the final clauses, which would inevitably involve discussion of the accession mechanism.

46. He did not see why individual States should not be given the possibility of applying the provisions of the convention from an earlier date than that of its general entry into force. Multilateral conventions often took a good deal of time to enter into force, and the practical importance of the future convention would probably be much enhanced if individual States could apply its provisions prior to their formal entry into force. The expression "except as may be otherwise agreed" was not very clear on that point. It would seem neither possible nor advisable to impose upon a State wanting to apply the draft convention before its general entry into force the obligation to reach agreement beforehand with all other States parties which had accepted that draft convention. In order not to disturb the unity of treaty relations, it would be preferable, in his opinion, to consider the possibility of applying the convention on a provisional basis, in accordance with article 25, paragraph 1, of the Vienna Convention on the Law of Treaties, which provided that "A treaty or a part of a treaty is applied provisionally pending its entry into force if: (*a*) the treaty itself so provides; or (*b*) the negotiating States have in some other manner so agreed."[6]

47. Nor did article 7 regulate the question of the provisional application of the convention; there again, it might perhaps have to be supplemented by the inclusion of provisions in the final clauses. The time-limit to be established for the provisional application of the convention should not in any case go further back than the date on which the convention was opened for signature.

48. To sum up, his delegation considered that article 7 should not be deleted, as had been suggested by some members of the Committee, for if that were done article 28 of the Vienna Convention would apply and the future convention would become ineffective. However, it felt that article 7 was incomplete and needed to be supplemented by provisions to be included in the final clauses of the draft articles. In its view, it was necessary first to determine whether

[6] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 292.

the rule of limited retroactivity was as such acceptable to the States participating in the Conference. The drafting of article 7 was another matter, which would to some extent depend on the final clauses.

49. His delegation agreed with the delegation of the Byelorussian SSR that the title of article 7 should be altered, but it did not consider the formula proposed by the Byelorussian delegation to be satisfactory. His delegation supported the suggestion made by the United Kingdom in its working paper and felt that they should be used as a basis for further work. It would also be willing to seek a solution along the lines indicated in the United States amendment, which pursued, by more radical means, the same objective as the United Kingdom by endeavouring to make the rule set forth in article 7 more flexible. The Cuban amendment was also designed to introduce greater flexibility into that article, but the solution which it envisaged to achieve that end would be difficult to apply in practice. The Malaysia amendment was of a purely drafting nature and did not seem essential.

50. Mr. WALKER (Barbados) said that he had difficulty in accepting article 7 as currently worded, since it did not appear to be relevant to States which had already attained independence. He was not happy with the words "except as may be otherwise agreed" at the end of the article, in that they did not specify by whom. He then raised the question whether it was intended that an agreement concluded outside the scope of the convention could activate a provision in the convention.

51. Concerning the amendments he said he could not support the amendment submitted by the Byelorussion SSR, as it appeared to have no relevance to States which had already attained independence, nor the Malaysian amendment, which he did not consider to be one of substance but rather of a drafting nature which did not alter the meaning of draft article 7. While understanding the concern which had prompted the Cuban amendment, he did not consider its form to be satisfactory. In contrast, he found merit in the United States amendment, the proposed title of which was satisfactory. He thought the amendment sought to clarify the expression "except as may be otherwise agreed". The amendment incorporated both instances of succession, namely succession after entry into force of the convention and succession prior to the entry into force of the convention. But he was not happy with the words, at the end of the amendment, "except when the status of the successor State in relation to the treaty has been resolved prior to the entry into force of these articles". It was his view that in those circumstances the question of succession would not arise at that point in time, as it would have already been settled.

52. Mr KATEKA (United Republic of Tanzania) agreed with the representative of India that article 7 should be deleted. He was, however, sympathetic towards the amendment submitted by Cuba, which enabled States that had attained their independence as a result of the decolonization process or the liberation struggle before the entry into force of the convention to utilize its provisions. He thought it fair to make an exception to the principle of non-retroactivity for such States, which had often found themselves in an unequal position vis-à-vis the colonial Power at the time of the succession of States and must therefore be given the opportunity to avail themselves of the provisions of the convention in order to correct the injustice to which they had been subject and to free themselves from colonial status.

53. He endorsed the title proposed in the United States amendment, but felt that that amendment made an unfair distinction by referring solely to the successor State. The successor State might have accepted an unjust situation, under pressure from the predecessor State, because of its eagerness to achieve its independence.

54. He would state his position on the working paper submitted by the United Kingdom during the consideration of the final clauses; however, he could already say that he had doubt concerning the usefulness of the proposals contained in that document. At the time of acceding to independence, most new States reserved their position with regard to a treaty by requesting a respite enabling them to accede to that treaty subsequently without any interruption occurring.

55. In conclusion, he said that he would prefer article 7 to be deleted; if, however, that article were to be retained, he would like the text to be amended along the lines of the Cuban amendment.

The meeting rose at 1.05 p.m.

10th MEETING

Wednesday, 13 April 1977, at 3.40 p.m.

Chairman: Mr. Riad (Egypt)

Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 approved by the General Assembly on 15 December 1975 and 24 November 1976 [Agenda item 11] (*continued*)

ARTICLE 7 (Non-retroactivity of the present articles) (*continued*)[1]

1. Mr. MANGAL (Afghanistan) said that his delegation supported the provisions of draft article 7. Al-

[1] For the amendments submitted to article 7, see 9th meeting, footnote 4.